

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Dana Peeples,)	C.A. No.: <u>9:20-cv-4463-RMG</u>
)	
Plaintiff,)	
)	NOTICE OF REMOVAL TO THE
v.)	UNITED STATES DISTRICT
)	COURT
Herrnstein Auto Group, LLC;)	
William A. Herrnstein;)	
Defendants.)	
_____)	

PLEASE TAKE NOTICE that on this date Defendants Herrnstein Auto Group, LLC, and William A. Herrnstein hereby give notice of the removal of this action from the Beaufort County Court of Common Pleas, pursuant to 28 U.S.C. §§ 1441 and 1446. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. In support of its notice of removal, Defendants state as follows:

PROCEDURAL BACKGROUND

1. On or about December 7, 2020, Plaintiff filed this action in the South Carolina Court of Common Pleas, Beaufort County, Civil Action 2019-CP-15-00412 (the “State Action”) alleging claims for negligence arising out of a motor vehicle accident occurring on or about September 11, 2019 involving Plaintiff and William A. Herrnstein, who was operating a vehicle owned by Defendant Herrnstein Auto Group, LLC, while on vacation.

2. All pleadings from the State Action are attached hereto as **Exhibit A**.

3. Complete diversity exists between the Plaintiff, a South Carolina citizen, and the Defendants. (See Complaint, ¶¶ 2-3). Defendant William A. Herrnstein is a citizen and resident

of the State of Ohio. Defendant Herrnstein Auto Group, LLC, is an Ohio corporation with its principal place of business in Ohio. (See Complaint ¶ 2).

4. Prior to filing this Notice of Removal, no Defendant has made any answer, pleading, or appearance in the State Court Action.

5. In Plaintiff's Complaint, Plaintiff did not include an itemized claim for damages. However, Plaintiff's Complaint prayed for actual damages, including medical expenses and pain and suffering, and punitive damages. (See Complaint, WHEREFORE Clause). In a correspondence, Plaintiff's attorney asserted Plaintiff's current medical expenses are \$309,003.42.

6. Pursuant to 28 USC § 1446(b)(2)(B), "[e]ach defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons . . . to file the notice of removal." Plaintiff filed this action on December 7, 2020, and Defendants received notice of the pleadings, without service, on December 14, 2020. Therefore, this Notice of Removal is filed within thirty (30) days from the date on which this action became removable.

DIVERSITY OF CITIZENSHIP

7. This Court has original jurisdiction over the subject matter of this action under 28 USC 1332 in that there is complete diversity between the proper parties to this action and more than \$75,000.00 in controversy, exclusive of interest and costs. Pursuant to 28 USC 1441, Defendant is entitled to remove the action to this Court.

8. Plaintiff is a citizen and resident of the State of South Carolina, residing in Beaufort County, South Carolina (Complaint, ¶ 1).

9. Defendant Herrnstein Auto Group, LLC is a corporation incorporated in the State of Ohio with its principle place of business in Ohio (Complaint, ¶ 2).

10. Defendant William A. Herrnstein is a citizen and resident of the State of Ohio.

11. Complete diversity exists between the parties, because the Plaintiff is a citizen of the State of South Carolina and no Defendant is a citizen of the State of South Carolina.

12. Defendants are informed and believe that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

13. Because this action is of a civil nature and involves a controversy wholly between citizens of different states and the amount in dispute exceeds the sum of \$75,000.00, exclusive of interest and costs, this lawsuit is one over which the United States District Court, District of South Carolina has original jurisdiction under Title 28, United States Code Section 1332.

14. Contemporaneously with this Notice of Removal, Defendants are filing a notice with the Clerk of Court of Beaufort County, South Carolina, indicating that the State Action is being removed to the United States District Court for the District of South Carolina, Beaufort Division, in accordance with 28 U.S.C. Section 1446(d).

15. Defendants submit this Notice of Removal without waiving any defenses to the claims and allegations asserted by Plaintiff or conceding that Plaintiff has asserted claims upon which relief may be granted.

16. Based on the foregoing, Defendants hereby remove the action now pending in the Fourteenth Judicial Circuit of the State of South Carolina, County of Beaufort, Case No. 2020-CP-07-02372.

WHEREFORE, Defendants respectfully request this Court to accept this Notice, to cause this entire suit to be docketed in this Court, and that this Court proceed to the final determination of this suit.

Respectfully submitted,

s/Robert D. Moseley, Jr.

Robert D. Moseley, Jr. (Fed Bar #05526)

William S. “Wilson” Jackson IV (Fed Bar #13047)

Moseley Marcinak Law Group LLP

PO Box 26148

Greenville, South Carolina 29616

(864) 248-6025 (864) 248-6035 (Fax)

Rob.Moseley@momarlaw.com

Wilson.Jackson@momarlaw.com

Attorneys for Defendants

December 28, 2020